

**MISCELLANEOUS CEREALS AND CEREAL PRODUCTS\*****29821. Wheat and barley. (Inj. No. 446.)**

**COMPLAINT FOR INJUNCTION FILED:** 12-13-62, Dist. N. Dak., against Englevale Farmers Elevator Co., a corporation, Englevale, N. Dak., Neil B. Coit, president, and Robert Scott, elevator manager.

**CHARGE:** The complaint alleged that the defendants were engaged in operating at Englevale, N. Dak., a grain elevator for the storage and distribution of wheat and barley for human consumption, and were introducing into interstate commerce such foods which were adulterated. The grain elevator facility included sheathing that contained 11 bins located approximately 100 yards west of the defendants' main elevator house and office, and that was designated House No. 2 and a wooden double-walled grain-storage structure that contained 4 flat-bottomed bins and a warehouse area, that was located east of and adjacent to House No. 2 elevator and that was designated as the Annex for the storage and distribution of wheat and barley for human consumption.

The complaint alleged further that the foods consisted in part of a filthy substance by reason of the presence of rodent excreta in the foods; and that the foods had been and were then being held at the defendants' grain elevator facility at Englevale, N. Dak., under insanitary conditions whereby they might have become contaminated with filth thereby rendering the foods adulterated within the meaning of 402(a)(3) and 402(a)(4).

The complaint alleged also that the insanitary conditions of the defendants' grain elevator facility at Englevale, N. Dak., resulted from and consisted of the presence in the House No. 2 elevator and the Annex structure of the following: approximately 75 rodent pellets per pint of the surface grain at the corners of the bins numbered 5, 11, and 13 of the House No. 2 elevator; clearly observable rodent trails on the surface of the grain of all bins of the House No. 2 elevator, except bin numbered 2 which was empty, and bins numbered 1 and 4, which were not full enough to be observed; approximately 20 rat pellets on the surface of the wheat in the chute from bin numbered 5 of the House No. 2 elevator; approximately 50 rat pellets at the west side of the foundation area beneath bin numbered 3 of the House No. 2 elevator; 4 rat pellets adjacent to several bushels of spilled barley in the foundation area beneath the bins of the House No. 2 elevator; spilled grain and 6 rat pellets beneath the driveway at the north side of the dump pit of the House No. 2 elevator; boot pit and back pit beneath the House No. 2 elevator not completely enclosed; two openings in the top of the conveyor of the Annex structure where rodents could enter; rodent tracks on the surface of the barley in all four bins of the Annex structure; and a dead mouse on a pile of spilled barley beneath the Annex structure.

The complaint alleged further that the defendants were well aware that the House No. 2 and the Annex structure were rodent infested; that food being stored therein was contaminated; and that their activities were in violation of the Act. Inspections of defendants' grain elevator facility at Englevale, N. Dak., were made on 10-23-58; 5-2/3-62; 9-10-62; and 10-2-62. Upon the completion of each of the above inspections, a report was given to the manager of the Englevale Elevator Co., which noted, in each report, the continuing rodent infestation of the House No. 2 elevator and the Annex structure.

\*See also Nos. 29816, 29817, 29819.

The complaint alleged also that despite the warnings conveyed to the defendants by the aforesaid inspection, the defendants had failed to correct the insanitary conditions at the House No. 2 elevator and the Annex structure and continued to introduce and cause to be introduced into interstate commerce, wheat and barley adulterated as specified above.

**DISPOSITION:** On 12-13-62, a temporary restraining order was entered restraining the defendants from introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, wheat and barley for human consumption and any similar article of food which was adulterated within the meaning of 402(a)(3), in that it consisted in part of a filthy substance, and within the meaning of 402(a)(4) in that it had been held under insanitary conditions whereby it may have become contaminated with filth; or from introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, wheat and barley for human consumption and any similar article of food held at defendants' wooden crib-type grain elevator designated as House No. 2 and wooden double-walled grain-storage structure adjacent thereto designated the Annex, at Englevale, N. Dak., unless and until (a) the House No. 2 elevator and the said Annex structure were thoroughly cleaned or renovated and rendered suitable for use in connection with the storage of wheat and barley for human consumption and any similar article of food, to wit, unless and until all rodents and rodent filth were removed from the House No. 2 elevator and the Annex structure; the equipment used in storing such food was cleaned; all rodent infestation in and about the House No. 2 elevator and the Annex structure was eliminated; the means of ingress and egress of the House No. 2 elevator and the Annex structure by rodents was closed; and any similar insanitary conditions which might result in wheat or barley for human consumption or any similar article being contaminated with filth while held at the House No. 2 elevator and the Annex structure were eliminated; and (b) all of the wheat and barley which was on hand at the House No. 2 elevator and the Annex structure at the time the House No. 2 elevator and the Annex structure was cleaned, renovated, and rendered suitable for the storage of food for human consumption was destroyed, denatured for use as animal feed, or cleaned and otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, and all expenses of such supervision were paid by the defendants. Thereafter, the temporary restraining order was continued in effect until 4-1-63, and in accordance with the terms of a proposal dated 1-22-63, and an amended proposal dated 3-14-63, entered by the defendants, the contaminated grain stored in the facility was disposed of for animal feed under the supervision of the Food and Drug Administration.

**29822. Wheat.** (F.D.C. No. 48790. S. No. 83-212 V.)

**QUANTITY:** 123,000 lbs. at Minneapolis, Minn.

**SHIPPED:** 5-6-63, from Armourdale, N. Dak., by Armourdale Equity Elevator.

**LIBELED:** 5-31-63, Dist. Minn.

**CHARGE:** 402(a)(2)(B)—when shipped, the article contained a pesticide chemical, a mercurial compound, which was unsafe within the meaning of 408(a), since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on wheat had been prescribed by regulations.